IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3807 OF 2006

Prithvisingh Vitthalsingh Pardeshi ...Applicant

V/s.

The State of Maharashtra ...Respondent

Mr.Naveen Chomal for Applicant.
Mr.Y.S. Shinde, APP for the State.

CORAM : V.M. KANADE, J.
DATED : 4th OCTOBER, 2007.

P.C:-

1. Heard learned counsel for the Applicant and learned APP for the State.

2. The Applicant is being tried by the Sessions Court for the offence punishable under provisions of the Atrocities Act. The Applicant, at the relevant time, was working as a Village Development Officer in Nashik and Government had formulated a scheme whereby Government had planned to give aid to the people leaving in rural areas for the purpose of building proper toilets and providing proper sanitation system. It is case of the Applicant that one Hiraman Khoskar had asked the Applicant to do the

illegal works and since the Applicant did not oblige said Hiraman Khoskar, there was enmity between them. A complaint was filed by one Uttam Thamake in which he has alleged that the Applicant had abused him on the basis of caste. Chargesheet was filed by the police and evidence was recorded by the Trial Court. It is the case of the Applicant that the Trial Court was not properly recording the evidence and, therefore, he filed application at Ex.19 requesting the Court to record entire evidence as narrated by the witness. The Trial Court rejected the said application by stating that it was not necessary to record each and every details which were given by the witness. Discretion was vested in the Court to record only the relevant evidence. Being aggrieved, the Applicant has filed this application, challenging the said order. The Applicant also seeks transfer of this case.

3. It appears that during the pendency of the application, case has already been transferred from the said Judge to a new Court. Learned counsel appearing on behalf of the Applicant submitted that evidence of PW-7 Sandipan Netke may be recorded afresh. Report was called for by order

dated 20th October, 2006 . Accordingly, report has been submitted by the District Judge. In my view, it would not be relevant to go through record and report since case has already been transferred to another court. Hence, prayer for transfer made by the Applicant does not survive.

4. However, in respect of other grievance regarding recording of evidence of PW-7 Sandipan Netke is concerned, in my view, it would be appropriate if the Court before whom matter is now transferred, records evidence of the said witness afresh. It is clarified that the allegations made by the Applicant against the learned Judge are not accepted. Explanation given by the Judicial Officer is accepted. However, fact remains that if any grievance is made by the Applicant regarding manner in which evidence has been recorded, it would be appropriate if the said evidence is again recorded by the judge to whom case has been transferred. Hence, evidence of PW-7 Sandipan Netke recorded by Smt.V.N. Tambi, Ad Hoc. District Judge and Addl. Sessions Judge-3, Nashik is set aside. The Trial Court shall record the evidence of PW-7 Sandipan Netke afresh.

. Application is allowed in the above terms and disposed of

accordingly.

V.M. KANADE, J.